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HOUSE BILL 369

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Edward C. Sandoval

AN ACT

**RELATING TO THE PROCUREMENT OF PUBLIC PROPERTY; AMENDING THE
PROCUREMENT CODE TO PROVIDE THAT, UNDER CERTAIN CIRCUMSTANCES,
BIDS AND PROPOSALS MAY BE SUBMITTED ELECTRONICALLY AND TO
PROVIDE, IN CERTAIN CIRCUMSTANCES, FOR REVERSE AUCTION
PROCEDURES AS AN ALTERNATIVE TO SEALED BIDS; DECLARING AN
EMERGENCY.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 13-1-28 NMSA 1978 (being Laws 1984,
Chapter 65, Section 1) is amended to read:**

**"13-1-28. SHORT TITLE. -- Sections [~~1 through 172 of this
act]~~ 13-1-28 through 13-1-199 NMSA 1978 may be cited as the
"Procurement Code". "**

**Section 2. Section 13-1-64 NMSA 1978 (being Laws 1984,
Chapter 65, Section 37) is amended to read:**

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1 "13-1-64. DEFINITION-- INVITATION FOR BIDS. -- "Invitation
2 for bids" means all documents, including those attached or
3 incorporated by reference, utilized for soliciting sealed or
4 reverse auction bids. "

5 Section 3. Section 13-1-95.1 NMSA 1978 (being Laws 2001,
6 Chapter 292, Section 7) is amended to read:

7 "13-1-95.1. ELECTRONIC TRANSMISSIONS. --

8 A. The state purchasing agent shall [~~work with the~~
9 ~~attorney general to~~] develop guidelines for central purchasing
10 offices to use electronic media, including acceptance of sealed
11 bids and [~~requests for~~] competitive sealed proposals that
12 include electronic signatures. The guidelines shall include:

13 [~~A.-~~] (1) appropriate security to prevent
14 unauthorized access to electronically submitted sealed bids or
15 proposals prior to the date and time set for opening of bids or
16 the deadline set for receipt for proposals, including the
17 electronic bidding, approval and award process; and

18 [~~B.-~~] (2) accurate retrieval or conversion of
19 electronic forms of information into a medium that permits
20 inspection and copying.

21 B. A central purchasing office, in an invitation
22 for bids or a request for proposals, may require all or any
23 part of a sealed bid or a competitive sealed proposal to be
24 submitted electronically if the office determines that an
25 electronic submission will be advantageous to the procurement

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1 process. If electronic submission is required:

2 (1) no hard copy documentation shall be
3 submitted to the central purchasing office prior to the award
4 of the contract, except as specifically identified in the
5 invitation for bids or the request for proposals;

6 (2) the invitation for bids or request for
7 proposals shall specify an opening date and time, a fixed
8 closing date and time and an email account to which the
9 electronic bid or proposal shall be submitted;

10 (3) for sealed bids, a representative of the
11 central purchasing office and a witness shall open the email
12 account immediately after the closing time, record the vendors
13 that submitted bids, the date and time submitted, the bids and
14 associated prices and prepare a bid tabulation of all
15 responsive vendors for review. The bids shall then be
16 evaluated and the contract awarded as required in the
17 invitation for bids and as otherwise provided in the
18 Procurement Code; and

19 (4) for sealed proposals, the proposals shall
20 be opened, evaluated and the contract awarded as required in
21 the request for proposals and as otherwise provided in the
22 Procurement Code."

23 Section 4. Section 13-1-102 NMSA 1978 (being Laws 1984,
24 Chapter 65, Section 75) is amended to read:

25 "13-1-102. COMPETITIVE SEALED BIDS REQUIRED. -- All

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1 procurement shall be achieved by competitive sealed bid
2 pursuant to Sections [~~76 through 83 of the Procurement Code~~]
3 13-1-103 through 13-1-110 NMSA 1978, except procurement
4 achieved pursuant to the following sections of the Procurement
5 Code:

6 A. Sections [~~84 through 97~~] 13-1-111 through
7 13-1-122 NMSA 1978, competitive sealed proposals;

8 B. Section [~~98~~] 13-1-125 NMSA 1978, small
9 purchases;

10 C. Section [~~99~~] 13-1-126 NMSA 1978, sole source
11 procurement;

12 D. Section [~~100~~] 13-1-127 NMSA 1978, emergency
13 procurements;

14 E. Section [~~102~~] 13-1-129 NMSA 1978, existing
15 contracts; [~~and~~]

16 F. Section [~~103~~] 13-1-130 NMSA 1978, purchases from
17 antipoverty program businesses; and

18 G. Section 13-1-110.1 NMSA 1978, reverse auction
19 bidding. "

20 Section 5. Section 13-1-103 NMSA 1978 (being Laws 1984,
21 Chapter 65, Section 76) is amended to read:

22 "13-1-103. [~~COMPETITIVE SEALED BIDS~~] INVITATION FOR
23 BIDS. --

24 A. An invitation for bids shall be issued and shall
25 include the specifications for the services, construction or

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1 items of tangible personal property to be procured, all
2 contractual terms and conditions applicable to the procurement
3 and whether the bid will be by sealed bid or by reverse
4 auction.

5 B. If the procurement is to be by sealed bid
6 without electronic submission, the invitation for bid shall
7 include the location where bids are to be received and the
8 date, time and place of the bid opening.

9 C. If the procurement is to be by sealed bid with
10 part or all of the bid to be submitted electronically, the
11 invitation for bids shall comply with the requirements of
12 Section 13-1-95.1 NMSA 1978.

13 D. If the procurement is to be by reverse auction,
14 the invitation for bids shall comply with the requirements of
15 Section 13-1-110.1 NMSA 1978."

16 Section 6. Section 13-1-107 NMSA 1978 (being Laws 1984,
17 Chapter 65, Section 80) is amended to read:

18 "13-1-107. COMPETITIVE SEALED BIDS-- BID OPENING. -- Bids
19 submitted electronically shall be opened as provided in Section
20 13-1-95.1 NMSA 1978; otherwise, bids shall be opened publicly
21 in the presence of one or more witnesses at the time and place
22 designated in the invitation for bids. The amount of each bid
23 and each bid item, if appropriate, and such other relevant
24 information as may be specified by the state purchasing agent
25 or a central purchasing office, together with the name of each

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1 bidder, shall be recorded, and the record and each bid shall be
2 open to public inspection. "

3 Section 7. A new section of the Procurement Code, Section
4 13-1-110.1 NMSA 1978, is enacted to read:

5 "13-1-110.1. [NEW MATERIAL] REVERSE AUCTION--PROCEDURE. --

6 A. Except as provided in Subsection G of this
7 Section, a central purchasing office may use a reverse auction,
8 in lieu of competitive bidding, for the procurement of goods
9 and nonprofessional services when the central purchasing office
10 determines that the reverse auction would be advantageous.

11 B. In addition to the information required by
12 Section 13-1-103 NMSA 1978, an invitation for bids using a
13 reverse auction shall designate both an opening date and time
14 and a closing date and time; provided that the closing date and
15 time need not be a fixed point in time, but may remain
16 dependent on variables specified in the invitation for bids.
17 In addition, an invitation for bids using a reverse auction may
18 require bidders to register before the opening date and time
19 and, as part of that registration, to agree to any terms,
20 conditions or other requirements set forth in the invitation.
21 Public notice of an invitation for bids using a reverse auction
22 shall be given in the same manner as provided for competitive
23 sealed bids in Section 13-1-104 NMSA 1978.

24 C. At the time specified in the invitation for
25 bids, the central purchasing office shall begin accepting real-

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1 time, on-line bids over the internet and shall continue to
2 accept such bids until the closing date and time. Following
3 receipt of the first bid after the opening date and time, all
4 bid prices shall be posted electronically to the internet and
5 updated on a real-time basis. During the bidding process, all
6 bidders' prices are public and shall be revealed on-line;
7 provided that bidders' names or other information that may
8 reveal a bidder's identity shall not be disclosed at any time
9 before the closing date and time. At any time before the
10 closing date and time, a bidder may lower, but not raise, the
11 price of its bid, if the lowered price is less than the then-
12 current low bid, and a bidder's lowest bid price supersedes all
13 prior higher bids from that bidder. Unless a bid is allowed to
14 be withdrawn pursuant to Subsection D of this section, all bids
15 are binding on the bidder; provided that a price entered in
16 error may be corrected by the bidder by complying with the time
17 frame and procedure for bid correction as specified in the
18 invitation for bids.

19 D. After the closing date and time, a bidder may
20 request, via an email message to the central purchasing office,
21 that its bid be withdrawn. Such a request may be allowed by
22 the central purchasing office only upon a written finding that
23 the bid was submitted or calculated by mistake. If the lowest
24 responsible bid is withdrawn pursuant to this subsection, the
25 central purchasing office may cancel the procurement, award the

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1 contract to the next lowest bidder or reopen the real-time
2 on-line bidding process to all previous bidders by giving
3 notice, as specified in the invitation for bids, of both the
4 new opening date and time and the new closing date and time.

5 E. A contract solicited by a reverse auction
6 process shall be awarded pursuant to the procedure prescribed
7 for competitive sealed bids in Section 13-1-108 NMSA 1978.

8 F. The secretary shall adopt such rules as are
9 necessary to effectuate the provisions of this section.

10 G. The reverse auction process may not be used for
11 the procurement of:

12 (1) construction contracts, construction
13 services, construction maintenance contracts or construction
14 contracts based on unit pricing; or

15 (2) construction materials to be used in any
16 contract or service specified in Paragraph (1) of this
17 subsection. "

18 Section 8. Section 13-1-112 NMSA 1978 (being Laws 1984,
19 Chapter 65, Section 85, as amended) is amended to read:

20 "13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR
21 PROPOSALS. --

22 A. Competitive sealed proposals, including
23 competitive qualifications-based proposals, shall be solicited
24 through a request for proposals [~~which~~] that shall be issued
25 and shall include the specifications for the services or items

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1 of tangible personal property to be procured, all contractual
2 terms and conditions applicable to the procurement, the
3 location where proposals are to be received and the date, time
4 and place where proposals are to be received and reviewed. A
5 request for proposals may, pursuant to Section 13-1-95.1 NMSA
6 1978, require that all or a portion of a responsive proposal be
7 submitted electronically.

8 B. In the case of requests for competitive
9 qualifications-based proposals, price shall be determined by
10 formal negotiations related to scope of work. "

11 Section 9. Section 13-1-138 NMSA 1978 (being Laws 1984,
12 Chapter 65, Section 111) is amended to read:

13 "13-1-138. COST OR PRICING DATA REQUIRED. --When required
14 by the state purchasing agent or a central purchasing office, a
15 prospective contractor shall submit cost or pricing data when
16 the contract is expected to exceed twenty-five thousand dollars
17 (\$25,000) and is to be awarded by a method other than
18 competitive sealed bids or reverse auction. "

19 Section 10. Section 13-1-139 NMSA 1978 (being Laws 1984,
20 Chapter 65, Section 112, as amended) is amended to read:

21 "13-1-139. COST OR PRICING DATA NOT REQUIRED. --The cost
22 or pricing data relating to the award of a contract shall not
23 be required when:

24 A. the procurement is based on competitive sealed
25 bid or reverse auction;

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